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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

CARMEN SANCHEZ et al., Plaintiffs and Appellants, v. STATE FARM GENERAL INSURANCE COMPANY, Defendant and Respondent.	B231113 (Los Angeles County Super. Ct. No. NC054031)

APPEAL from the judgment of the Superior Court of Los Angeles County. Patrick T. Madden, Judge. Affirmed.

Jonathan D. Winters for Plaintiffs and Appellants

LHB Pacific Law Partners, Clarke B. Holland and Canon T. Young and for Defendant and Respondent

* * * * * * * * * *

Plaintiff and appellant Carmen Sanchez purchased a single-family home in the City of Long Beach. She subsequently obtained a homeowner's insurance policy from defendant and respondent State Farm General Insurance Company (State Farm). Ms. Sanchez's family members who resided with her (plaintiffs and appellants Alberto Esquivel, Walter Sanchez and Selena Esquivel) were additional insureds under the homeowner's policy. Plaintiffs sustained damage to the home and submitted two separate claims of loss to State Farm, both of which were denied.

Plaintiffs filed this action against State Farm alleging breach of the implied covenant of good faith and fair dealing, breach of insurance contract, violation of Civil Code section 1632, intentional infliction of emotional distress and negligence. All of the claims were based on the denial of plaintiffs' two claims under the homeowner's policy. The trial court disposed of the cause of action under Civil Code section 1632 by way of demurrer, and granted summary judgment to State Farm on the remaining four claims. Plaintiffs appeal, contending there were triable issues as to the timeliness and the merits of the action. Plaintiffs do not raise any issue concerning the demurrer.

We conclude the action is time-barred as a matter of law and affirm the summary judgment on that basis. We do not address the parties' remaining arguments. (*Blatty v. New York Times Co.* (1986) 42 Cal.3d 1033, 1048-1049.)

FACTUAL AND PROCEDURAL BACKGROUND

We limit our summary to those facts germane to the question of the timeliness of plaintiffs' action and those additional facts necessary for context. For purposes of our review, we accept plaintiffs' facts and State Farm's undisputed facts as true. (*Raghavan v. Boeing Co*. (2005) 133 Cal.App.4th 1120, 1125.)

In 2005, Carmen Sanchez purchased a single-family home on East Smith Place in the City of Long Beach (subject property). Ms. Sanchez is from Mexico and her native language is Spanish. While she understands some English, she is not fluent. Ms. Sanchez moved into the subject property with her boyfriend, Alberto Esquivel, and their two children, Walter Sanchez and Selena Esquivel.

Plaintiffs initially had some form of homeowner's insurance coverage with another insurer, which denied coverage for a claim submitted by plaintiffs concerning rotted and decayed wood in the front porch.

In May 2007, plaintiffs obtained a new homeowner's insurance policy with State Farm. State Farm issued homeowner's policy number 71-LQ-2173-7 (Policy) to Ms. Sanchez effective May 23, 2007. As residents of the home with Ms. Sanchez, Mr. Esquivel and the two children were additional insureds under paragraph 4 of the Definitions section of the Policy. Ms. Sanchez timely paid all premiums due under the Policy, which was in effect from May 23, 2007 through May 23, 2010.

Paragraph 6 in "Section 1 – Conditions" of the Policy is a suit limitation provision entitled "Suit Against Us" and provides: "No action shall be brought unless there has been compliance with the policy provisions. The action must be started within one year after the date of loss or damage."

Sometime in late 2007, plaintiffs noticed that several tiles on the wall in the bathroom were loose or buckling. There was also some buckling of the exterior stucco on the same wall. Plaintiffs hired Carlos Alvarez to assess what was wrong and to repair the wall. On February 1, 2008, while Mr. Alvarez was beginning his demolition of the wall, a large portion of the wall around the bathroom window collapsed, leaving the window hanging in the framing and exposing extensive wet and rotted wood "studs" and drywall. Mr. Alvarez also saw termite damage.

On February 29, 2008, plaintiffs reported the bathroom wall damage to State Farm. State Farm assigned the claim number 75-M517-385 (Wall Claim). A State Farm claims representative spoke with Ms. Sanchez about the Wall Claim on March 4, 2008, and a couple of days later, a State Farm representative came to the subject property to inspect the damage. The representative told plaintiffs the interior wall damage could extend further into the house. At the time of the inspection, a portion of the wall had been rebuilt by Mr. Alavarez a few feet back from the original location and the wet, decayed construction materials were in a debris pile in the yard.

On March 11, 2008, State Farm sent plaintiffs a letter denying the Wall Claim. The denial letter stated that State Farm's investigation of the Wall Claim revealed the loss was not covered by the Policy, as the "predominant cause of loss was from repeated seepage and leakage of water from [plaintiffs'] plumbing system as well as exterior water intrusion into [plaintiffs'] home." The letter cited to specific provisions and exclusions in the Policy and invited plaintiffs to submit any additional information they might have regarding the claim to State Farm for further consideration. The letter also advised plaintiffs they could have the denial of the Wall Claim reviewed by the California Department of Insurance. Contact information for the Department was provided.

The March 11, 2008 denial letter expressly advised plaintiffs of the suit limitation provision and quoted it in its entirety. The letter also explained: "The one-year period referred to does not include the time we take to investigate your claim. The time from the date of loss (February1, 2008) to the date you reported your claim to your agent does count in computing the amount of time that has already expired. The suit-limitation period is again running as of the date of this letter." The entire letter was translated into Spanish, except for the quotations of the actual Policy language. Both the English and Spanish versions of the letter were mailed to plaintiffs.

Following receipt of the denial letters regarding the Wall Claim, plaintiffs decided to hire a contractor to complete the repairs to the bathroom, to determine if there was further decay inside more walls and to perform some additional remodeling work at the subject property. Because the scale of the job was too large for Mr. Alvarez, plaintiffs located Remy Construction through an advertisement and hired it to perform the work.

Remy Construction began work at the subject property and apparently demolished most of the home, leaving only the converted detached garage, in which plaintiffs were residing. Remy Construction then began rebuilding the home. In early May 2008, a building inspector from the City of Long Beach (City) cited the project for construction defects, including a failure to place anchor bolts in the foundation. Ms. Sanchez went to the City to obtain information on the project and learned that Remy Construction had not

paid for, or obtained, the requisite building permits. On May 25, 2008, Remy Construction demolished all of the new construction and abandoned the project.

Plaintiffs hired an attorney and, on May 30, 2008, filed a lawsuit against the sellers from whom they purchased the subject property, as well as the real estate agents and brokers, the home inspection company and the termite inspection company involved in the 2005 property sale transaction. The action was entitled *Sanchez et al. v. Keller Williams Coastal Properties et al*., Los Angeles Superior Court case number NC051360 (*Keller Williams* action). In the *Keller Williams* action, plaintiffs alleged that the defendants willfully failed to disclose to plaintiffs, at the time of sale, material defects in the subject property, including termite infestation, dry rot, and mold infestation.

In October 2008, plaintiffs' attorney wrote a letter to State Farm advising that he represented plaintiffs and requesting a copy of the claims file. The letter does not refer to or advise State Farm about the filing of the *Keller Williams* action. During this same time period, State Farm also received a business records subpoena from one of the parties in the *Keller Williams* action seeking a copy of the claims file. State Farm complied with both requests to provide complete copies of the Wall Claim file.

On August 19, 2009, over a year after the demolition of the subject property, Ms. Sanchez contacted her insurance agent and inquired about her premium payments on the Policy in light of the fact the house had been demolished. This inquiry was referred by the agent to State Farm on or about August 20, 2009. State Farm contacted Ms. Sanchez to inquire if she was attempting to give notice of a claim under the Policy. Ms. Sanchez confirmed that she wished to make a claim and State Farm assigned claim number 75-M561-412 (Whole House Claim). The date of loss was identified as May 25, 2008, the date the house was demolished.

On September 15, 2009, State Farm wrote plaintiffs a letter confirming the opening of the new claim. As with all correspondence to plaintiffs, a copy was sent in English as well as a copy translated into Spanish, except that direct quotes of actual policy language were not translated. Thereafter, State Farm conducted an inspection of the subject property and took a recorded statement of Ms. Sanchez. State Farm also

requested, and eventually received from plaintiffs, copies of documents related to the construction work by Remy Construction, including plaintiffs' complaint to the State Contractor's Board. State Farm did not require plaintiffs to complete a formal proof of loss form. The claims file notes that during the September 2009 property inspection, plaintiffs told the State Farm agent about the pending *Keller Williams* action.

On November 24, 2009, State Farm sent plaintiffs a letter denying coverage for the Whole House Claim, due in part to the fact the house was demolished by government order for defective construction, the loss was not the result of an accidental loss, and for failure to timely report the claim or comply with the suit limitation provision.

Plaintiffs filed this action against State Farm on January 21, 2010. Plaintiffs' operative first amended complaint included claims for breach of the implied covenant of good faith and fair dealing, breach of insurance contract, intentional infliction of emotional distress and negligence. Plaintiffs alleged they "suffered water damage to the subject property" on or about February 2, 2008, and that they "suffered building damage to the subject property" on or about May 25, 2008, and that separate claims were submitted to State Farm for both incidents of property damage.

State Farm moved for summary judgment on the grounds the action was time-barred under the one-year suit limitation provision in the Policy and because the damages identified in both claims were not covered under the Policy. After briefing and oral argument, the trial court granted State Farm's motion and entered judgment in its favor. This appeal followed.

DISCUSSION

Plaintiffs contend their action is timely on numerous bases. First, plaintiffs argue that the Wall Claim and the Whole House Claim were essentially just one claim, submitted twice, based on the same hidden defects in the walls of the subject property for which they gave notice to State Farm in February 2008 and for which State Farm did not issue an unequivocal denial until November 24, 2009. Plaintiffs argue the one-year filing period was tolled between the February 2008 date of notice and the November 2009

denial pursuant to *Prudential-LMI Com. Insurance v. Superior Court* (1990) 51 Cal.3d 674 (*Prudential-LMI*), and that the action was timely filed on January 21, 2010.

Plaintiffs further argue the limitation period was equitably tolled during the time plaintiffs were pursuing the *Keller Williams* action against the former property owners, the real estate brokers and other entities allegedly involved in the concealment of material defects in the home during the property sale.

And, plaintiffs contend State Farm must be equitably estopped from asserting the time bar as a defense because it misled plaintiffs into delaying the filing of an action by failing to translate pertinent provisions of the Policy into Spanish despite knowing plaintiffs were not fluent in English, failing to timely take a recorded statement of Ms. Sanchez and obtain a formal proof of loss, and allowing plaintiffs to believe the claim had been re-opened in August 2009 and was being reinvestigated in good faith.

We conclude all of plaintiffs' arguments lack merit and that the action is time barred as a matter of law.

1. Standard of Review

Our review is de novo. "We independently review an order granting summary judgment. [Citation.] We determine whether the court's ruling was correct, not its reasons or rationale. [Citation.] 'In practical effect, we assume the role of a trial court and apply the same rules and standards which govern a trial court's determination of a motion for summary judgment.' [Citation.]" (*Shugart v. Regents of University of California* (2011) 199 Cal.App.4th 499, 504-505.) And, " '[w]here the operative facts are undisputed, the question of the application of the statute of limitations is a matter of law [citation], and summary judgment is proper where the facts show the action is time-barred as a matter of law [citation].' [Citation.]" (*Velasquez v. Truck Ins. Exchange* (1991) 1 Cal.App.4th 712, 717 (*Velasquez*).)

2. The Suit Limitation Provision

The Policy contains a one-year suit limitation provision patterned after Insurance Code section 2071. The provision states: "No action shall be brought unless there has been compliance with the policy provisions. *The action must be started within one year*

after the date of loss or damage." (Italics added.) Such provisions, which have become standard in most homeowner's policies, have " 'long been recognized as valid in California.' " (*Prudential-LMI, supra*, 51 Cal.3d at p. 683.)

By the plain wording of the provision, the one-year limitation period under the Policy (like all suit limitation provisions styled on Insurance Code section 2071) is triggered by the date of loss or damage. In *Prudential-LMI*, the Supreme Court clarified the phrase "date of loss" or "inception of loss" and enunciated a delayed discovery rule. The date of loss is "defined as that point in time when appreciable damage occurs and is or should be known to the insured, such that a reasonable insured would be aware that his notification duty under the policy has been triggered." (*Prudential-LMI, supra*, 51 Cal.3d at p. 687.) "Once any damage becomes reasonably apparent the time begins to run, even if the full extent of the damage is unknown. 'The inception of the loss occurs when the insured should have known that *appreciable damage* had occurred, not when the homeowner learned the true extent of the damage.' [Citation.]" (*Doheny Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1086 (*Doheny Park*).) This rule "applies even in the case of a single catastrophic event." (*Ibid*.)

The dates of loss on the Wall Claim and the Whole House Claim are undisputed. Plaintiffs' pleadings and admissions of undisputed facts in opposition to State Farm's motion definitively establish the date of loss on the Wall Claim as February 1, 2008[1] and the date of loss on the Whole House Claim as May 25, 2008. Plaintiffs' admissions also establish that there were two separate damage claims submitted to State Farm, not one claim as argued by plaintiffs on appeal.

Plaintiffs argue that State Farm was not entitled to summary judgment on the one-year suit limitation provision because it did not show evidence of prejudice resulting

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1 In their operative pleading, plaintiffs admit the date of loss on the Wall Claim was February 2, but admit February 1 as the correct date in their opposition papers to the summary judgment motion. This one-day discrepancy is immaterial to our analysis and disposition.

from plaintiffs' delay in filing this action. Plaintiffs rely on authority that does not apply to the one-year suit limitation. An insurer cannot deny coverage on the ground that the insured breached the requirement in the policy to provide prompt notice of a loss and to cooperate with the insurer's investigation of the claim unless the insurer can demonstrate actual prejudice from the late notice or failure to cooperate. (*Campbell v. Allstate Ins. Co.* (1963) 60 Cal.2d 303, 305-306.) We have found no case that required a showing of prejudice outside the notice-cooperation clause context. (See *Scottsdale Ins. Co. v . Essex Ins. Co.* (2002) 98 Cal.App.4th 86, 97.) State Farm did not obtain summary judgment on the ground that plaintiffs breached the notice-cooperation clause. State Farm obtained summary judgment on the ground that plaintiffs did not file this lawsuit until long after one year from the dates of loss on the Wall Claim and the Whole House Claim. The one-year suit limitation provision has long been recognized as valid in California, as stated *ante*, and State Farm did not have to show prejudice in order to assert the provision in defense of this action.

Given that this action was not filed until *almost two years after both dates of loss*, plaintiffs' action is untimely under the one-year suit limitation provision, unless the doctrines of equitable tolling or equitable estoppel apply. As we explain, there are insufficient facts to show there is a material dispute that either doctrine saves plaintiffs' action from the time bar.

3. Equitable Tolling

a. The Wall Claim

Under *Prudential-LMI*, the "limitation period [is] equitably tolled from the time the insured files a timely notice, pursuant to policy notice provisions, to the time the insurer formally denies the claim in writing." (*Prudential-LMI*, *supra*, 51 Cal.3d at p. 678.) Plaintiffs were therefore entitled to 11 days of tolling under *Prudential-LMI* on the Wall Claim to account for the time between February 29, 2008, when the claim was reported to State Farm through March 11, 2008, when the claim was denied in writing by State Farm. The 11 days of tolling extended the last day to file a civil action as to the

Wall Claim to February 11, 2009. Plaintiffs' action was not filed until January 21, 2010. Plaintiffs contend additional periods of tolling apply.

We are not persuaded that State Farm "re-opened" the Wall Claim in August 2009, triggering another tolling period. No facts support a reasonable inference that State Farm "re-opened" the Wall Claim on August 20, 2009. Rather, the record establishes that State Farm opened a new claim, the Whole House Claim, under a new claim number, based on plaintiffs' report of the entire house having been demolished by Remy Construction during the course of a remodeling project. The argument ignores State Farm's undisputed *denial* of the Wall Claim on March 11, 2008, which started the clock running again on the suit limitation period.

Moreover, since the one-year limitation period expired on February 11, 2009, it was already too late to "re-open" the Wall Claim when State Farm opened the Whole House Claim in August 2009. (*Singh v. Allstate Ins. Co.* (1998) 63 Cal.App.4th 135, 142 (*Singh*) [no second period of tolling applies to request for reconsideration and reinvestigation of denied claim]; accord, *Doheny Park*, *supra*, 132 Cal.App.4th at p. 1088; see also *Love v. Fire Ins. Exchange* (1990) 221 Cal.App.3d 1136, 1151 [where insured's right to recover benefits is already time-barred, "he may not resurrect his rights merely by resubmitting a claim after the lapse of the limitations period"].) The *Singh* court aptly reasoned that "[o]nce a claim has been made, the carrier has pursued its investigation, and the claim has been denied, the policies behind allowing equitable tolling have been fulfilled. . . . Thereafter, however, the enforcement of the one-year limit works no injustice to either party." (*Singh*, *supra*, 63 Cal.App.4th at p. 142.)

Plaintiffs' reliance on *Ashou v. Liberty Mutual Fire Ins. Co.* (2006) 138 Cal.App.4th 748 is misplaced. *Ashou* involved an earthquake claim arising from the 1994 Northridge Earthquake and Code of Civil Procedure section 340.9, enacted in 2000, which was specifically enacted to provide a new statutory one-year filing period for time-barred earthquake claims. (*Ashou*, at pp. 753-755.) In concluding that a new period of tolling under *Prudential-LMI* was warranted for any claims reconsidered by insurers in light of the new statute, the *Ashou* court distinguished *Singh* and explained that the

legislative record showed there had been reports of rampant claims mishandling following the 1994 Northridge Earthquake and that, given those unique circumstances, a new period of equitable tolling was also warranted. (*Ashou*, at pp. 760-761.) There are no similar facts here.

Plaintiffs also contend their time to file an action against State Farm was equitably tolled while they pursued the *Keller Williams* action. Plaintiffs are correct that where the requisite elements of equitable tolling are established, the good faith pursuit of one remedy may toll the limitation period on a second remedy. (See, e.g., *Collier v. City of Pasadena* (1983) 142 Cal.App.3d 917 (*Collier*) [filing of a worker's compensation claim tolls limitations period for the filing of a disability pension claim arising from the same disabling injury].) The requisite elements for such equitable tolling are: " '(1) timely notice to the defendant in filing the first claim; (2) lack of prejudice to defendant in gathering evidence to defend against the second claim; and, (3) good faith and reasonable conduct by the plaintiff in filing the second claim.' [Fn. omitted.] [Citations.] The requirement of timely notice basically means the first claim must have been filed within the statutory period; the filing of the first claim also must have alerted the defendant in the second claim of the need to begin investigating the facts that form the basis for the second claim. [Citation.] Normally, this means the defendant in the first claim is the same one being sued in the second. [Citation.] The second prerequisite in essence translates into a requirement that the facts of the two claims be identical or at least so similar that the defendant's investigation of the first claim will put him in a position to fairly defend the second." (*Aguilera v. Heiman* (2009) 174 Cal.App.4th 590, 598-599.)

Plaintiffs have not demonstrated there is a triable issue as to the existence of these three elements. First, there are no facts showing State Farm was given timely notice of the *Keller Williams* action—an action in which it was not named as a party. In October 2008, State Farm received a letter from a lawyer written on behalf of plaintiffs, but the lawyer said nothing about the *Keller Williams* action. Around that time, State Farm was served with, and complied with, a business records subpoena from one of the parties in the *Keller Williams* action. But, there are no facts showing State Farm was on notice of a

need to start gathering and preserving evidence in order to defend against a potential bad faith action by plaintiffs at a future date. (*Collier, supra,* 142 Cal.App.3d at p. 928 [function of first element is "to alert the defendant in the second action of the need to gather and preserve evidence"].)

Additionally, there is no evidence supporting a finding that the *Keller Williams* action was substantially similar to this action. Indeed, the two actions seek different remedies for entirely separate wrongs.[2] The *Keller Williams* action primarily alleges fraud, based on the failure of the sellers and the real estate agents to disclose material facts in the property sale transaction. Even if State Farm were aware of that action, knowing about that dispute would not put State Farm on notice that it needed to preserve facts and evidence material to any later insurance bad faith claims. "Though equity will toll the statute of limitations while a plaintiff, who possesses different legal remedies for the same harm, reasonably and in good faith pursues one, *it will not toll the statute while a plaintiff, who has allegedly suffered several different wrongs, pursues only one remedy as to one of those wrong*[*s*]." (*Aerojet General Corp. v. Superior Court* (1986) 177 Cal.App.3d 950, 956, italics added; accord, *Loehr v. Ventura County Community College Dist.* (1983) 147 Cal.App.3d 1071, 1086.)

b. The Whole House Claim

Tolling under *Prudential-LMI* does not apply to the Whole House Claim. Plaintiffs did not report this claim until some 15 months *after* the undisputed date of loss of May 25, 2008, the date the entire structure was demolished. The last day to file any civil action on the Whole House Claim was May 25, 2009. Therefore, a civil action was *already time-barred* under the suit limitation provision when plaintiffs belatedly reported the Whole House Claim to State Farm on August 20, 2009. State Farm's conduct, under a reservation of rights, from August 20, 2009 to November 24, 2009, in attempting to verify the timeliness and validity of plaintiffs' second claim under the Policy, cannot be

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[2] As part of its opposition papers, plaintiffs submitted, for judicial notice, a copy of the operative fourth amended complaint in the *Keller Williams* action.

characterized as a waiver of its rights to assert the time bar. By the time of reporting, plaintiffs had already allowed, through their own inaction, the one-year limitation period to expire. Finally, as already explained above, there is no equitable tolling available based on plaintiffs' filing and pursuit of the *Keller Williams* action.

3. Equitable Estoppel

Equitable estoppel is a distinct doctrine from equitable tolling. " 'Tolling, strictly speaking, is concerned with the point at which the limitations period begins to run and with the circumstances in which the running of the limitations period may be suspended. . . . Equitable estoppel, however, is a different matter. . . . [It] addresses itself to the circumstances in which a party will be estopped from asserting the statute of limitations as a defense to an admittedly untimely action because *his conduct has induced another into forbearing suit within the applicable limitations period*. . . . [The doctrine] takes its life . . . from the equitable principle that no man will be permitted to profit from his own wrongdoing in a court of justice.' . . . [Citation.]" (*Battuello v. Battuello* (1998) 64 Cal.App.4th 842, 847-848, italics added; accord, *Cordova v. 21st Century Ins. Co.* (2005) 129 Cal.App.4th 89, 96.)

"[A]n insurer may be estopped to assert a policy provision limiting the time to sue where it has caused the insured to delay filing suit until after the expiration of the time period." (*Doheny Park, supra*, 132 Cal.App.4th at p. 1090.) " ' "To create an equitable estoppel, 'it is enough if the party has been induced to *refrain* from using such means or taking such action as lay in his power, by which he might have retrieved his position and saved himself from loss.' . . . '. . . Where the delay in commencing action is induced by the conduct of the defendant it cannot be availed of by him as a defense.' " ' [Citation.]" (*Ibid.*)

There are no material facts in the record supporting the application of the doctrine of equitable estoppel. Even if we were to construe State Farm's investigation of the Whole House Claim between August 20, 2009 through November 24, 2009, as conduct that would induce a reasonable insured to delay in filing a civil action, that would not help plaintiffs, because the limitation period had *already expired* on both the Wall Claim

(February 11, 2009) and the Whole House Claim (May 25, 2009). Conduct occurring *after* the expiration of the limitation period cannot, as a matter of law, create an estoppel. (*CBS Broadcasting, Inc. v. Fireman's Fund Ins. Co*. (1999) 70 Cal.App.4th 1075, 1085 [insured "cannot escape the effect of the limitations provision" by reliance on insurer's actions occurring months after claim was already time-barred]; *Magnolia Square Homeowners Assn. v. Safeco Ins. Co.* (1990) 221 Cal.App.3d 1049, 1063 [conduct by insurer after 12-month period had run could not "lull" insured into refraining from filing suit]; see also *Prudential-LMI*, *supra*, 51 Cal.3d at p. 690, fn. 5 [insurer's conduct after expiration of limitation period does not as a matter of law amount to waiver or an estoppel].) At that point, the insured has already, by his or her own conduct, allowed the filing period to pass without any reliance on purported conduct by the insurer for delaying institution of a civil action.

Such is the case here. Plaintiffs allowed the limitation period to lapse on the Wall Claim on February 11, 2009, and on the Whole House Claim on May 25, 2009. The fact that several months later, in August 2009, plaintiffs believed State Farm was reconsidering their claims is therefore of no moment. We have no difficulty in finding that State Farm's conduct in opening the Whole House Claim in August 2009 and attempting to determine its validity, despite the belated notice, did not resurrect plaintiffs' time-barred claims.

Plaintiffs cite to no evidence of conduct by State Farm that occurred *before* May 25, 2009, that induced them to delay filing their lawsuit. The only pre-August 2009 conduct they cite is State Farm's failure to translate the policy provisions into Spanish in its correspondence with plaintiffs and failure to have Ms. Sanchez complete a formal proof of loss. However, plaintiffs offer no explanation why such conduct raised a material issue on the issue of equitable estoppel. We do not perceive why these facts would induce plaintiffs to delay in suing State Farm, particularly since they had been told in writing in both English and Spanish in March 2008 that State Farm denied the Wall Claim and the time period for filing a suit was running. Plaintiffs also fail to cite any

legal authority requiring the translation of the material terms of an insurance policy into a foreign language. Plaintiffs failed to raise a triable issue as to equitable estoppel.

4. The Time Bar Applies to All Claims

The one-year suit limitation provision applies to the contractual cause of action for breach of the Policy, and it also applies to plaintiffs' tort claim for breach of the implied covenant of good faith and fair dealing. The bad faith claim, as pled, is premised solely on State Farm's allegedly unreasonable adjustment of, and wrongful denial of, the two claims of loss. It is a bad faith claim that is unequivocally "on the policy" and therefore covered by the suit limitation provision. (*Velasquez, supra*, 1 Cal.App.4th at p. 719 [allegations of bad faith conduct "relating to the handling of a claim or the manner in which it is processed, . . . is an action 'on the policy' "]; *Lawrence v. Western Mutual Ins. Co.* (1988) 204 Cal.App.3d 565, 575 [bad faith denial of claim is fundamentally a claim on the policy and subject to contractual suit limitation provision].)

It is equally clear the time bar applies to plaintiffs' two additional tort claims for negligence and intentional infliction of emotional distress. Both tort claims are based on the same acts of alleged bad faith by State Farm in denying benefits under the Policy that form the basis of plaintiffs' bad faith cause of action, and nothing more. The negligence claim alleges that State Farm was "negligent in denying" and "negligent in investigating" the "claims made for damage to the subject property in February and May of 2008." The intentional infliction of emotional distress claim alleges that State Farm breached the duty of good faith and fair dealing in failing to implement and follow guidelines for investigating a claim, failing to adequately investigate before denying plaintiffs' claims, and denying plaintiffs' February and May 2008 claims under the Policy.

Accordingly, the one-year suit limitation provision applies. (See, e.g., *Prieto v. State Farm Fire & Casualty Co*. (1990) 225 Cal.App.3d 1188, 1196 [suit limitation provision applies to bad faith and emotional distress claims that were merely "theoretical restatement[s]" of claim for failure to pay benefits due under the insurance contract]; *Abari v. State Farm Fire & Casualty Co*. (1988) 205 Cal.App.3d 530, 536 [bad faith and unfair practices claims governed by contractual suit limitation provision as claims were

merely "transparent attempt to recover *on the policy*, notwithstanding [insured's] failure to commence suit within one year of accrual" of damage]; see also Croskey et al., Cal. Practice Guide: Insurance Litigation (The Rutter Group 2011) ¶¶ 6:124 - 6:127.3, pp. 6A-33 – 6A-34.)

We are not faced here with a tort claim based on conduct beyond claims handling and denial of benefits. There are no allegations, for example, of post-denial misconduct or fraud by State Farm. Plaintiffs' operative allegations, no matter their titles, are claims "on the policy" subject to the suit limitations provision. Plaintiffs do not even attempt to argue otherwise. Summary judgment was properly entered.

DISPOSITION

The judgment is affirmed. State Farm shall recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.